DTCC

Tel: 212 855 1000
www.dtcc.com

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

March 28, 2007

VIA ELECTRONIC SUBMISSION

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: File No. S7-22-061;Docket No. R-1274
Proposed Rules Regarding the Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for Banks

Dear Ms. Morris and Ms. Johnson:

National Securities Clearing Corporation ("NSCC") appreciates the opportunity to comment on the proposed rules jointly issued by the Securities and Exchange Commission ("Commission") and the Board of Governors of the Federal Reserve System ("Board") regarding certain exceptions for banks from the definition of the term "broker" under Section 3(a)(4) of the Securities Exchange Act of 1934 ("Exchange Act"). NSCC, a wholly-owned subsidiary of The Depository Trust & Clearing Corporation, is a registered clearing agency, registered with the Commission under Section 17A of the Exchange Act, and a self regulatory organization ("SRO") under Section 19 of the Exchange Act. NSCC is subject to Commission supervision and must comply with the requirements of Section 17A and 19 of the Exchange Act and the Commission's standards applicable to clearing agencies[1].

[1] The rules of a clearing agency must facilitate the prompt and accurate clearance and settlement of securities transactions, safeguard securities and funds in its control, foster cooperation and coordination with persons engaged in clearance and settlement of securities transactions, remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, protect the interests of investors and the public, and not unfairly discriminate in the admission of participants and access to clearing agency services. See Section 17A(b)(3) of the Exchange Act and Exchange Act Release No. 34-16900 (June 17, 1980). As an SRO, NSCC is also subject to the Commissions standards applicable to electronic data processing operations under its Automative Review Policy ("ARP"). See Exchange Act Release Nos. 34-27445 (November 16, 1989) and 34-29185 (May 9, 1991).

NSCC is an industry utility that is owned and governed by the broker-dealers, banks, mutual funds and other financial institutions that use its services. NSCC generally prices its services at cost and rebates any excess revenue back to its members ratably in accordance with their usage of NSCC services.[2]

Under Section 17A(b)(3)(B) of the Exchange Act, both banks and insurance companies are types of entities which must be allowed membership in NSCC, subject only to NSCC's membership standards.

NSCC's Role as a Registered Clearing Agency for the Mutual Fund and Insurance Industries

NSCC offers centralized information and settlement services for transactions in mutual funds, other pooled investment funds, annuities and life insurance products by linking funds and insurance carriers with broker-dealers, banks and other financial intermediaries that distribute mutual funds and insurance products, respectively. NSCC introduced its mutual fund services in the 1980's. The insurance services were introduced later, in 1997, and later enhanced to offer additional functionalities in recent years. As of year-end 2006, there were approximately 628 fund companies, 601 distributors and 141 insurance carrier members using these services. Settlement of transactions and money through NSCC reduces systemic risk and promotes safety and soundness in the capital markets.[3]

NSCC Mutual Fund Services

NSCC is the only registered clearing agency that processes mutual funds. NSCC provides an automated, centralized system for trade processing and financial settlement of mutual fund orders, Fund/SERV®. Direct access to NSCC's Mutual Fund Services is limited to NSCC members, which are typically broker-dealers, banks, trust companies, insurance companies, third-party administrators, registered investment companies, and registered investment advisors and underwriters of registered investment companies. NSCC's Fund/SERV system receives order information from broker-dealers, banks, 401(k) administrators and other NSCC participants that distribute mutual fund shares, and transmits the information to the appropriate fund. The fund may confirm or reject each order and send the corresponding order confirmation or rejection data through Fund/SERV to the appropriate broker-dealer or other NSCC participant. NSCC's other Mutual Fund Services (such as Networking and Mutual Fund Profile Service, among others) facilitate information sharing between mutual funds and distributors, often to support compliance with regulatory or legal requirements.

---

[2] NSCC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation which, in turn, is owned by its principal users: major banks, broker-dealers, insurance companies, mutual fund firms and other companies within the financial industry.

[3] NSCC also provide centralized clearance, settlement and information services for a substantial majority of U.S. broker-to-broker trades in equity securities, corporate and municipal bonds, exchange-traded funds and unit investment trust shares.

Other Pooled Investment Funds Processed on Fund/SERV

In addition to providing processing for open-end mutual funds, NSCC's Mutual Fund Services are also used to process shares in other registered investment companies (both management companies and unit investment trusts), and pooled investment funds regulated under bank or insurance law such as bank collective trusts, stable value funds and guaranteed investment contracts (GIC's). These bank and insurance investment funds are generally marketed through the same distribution channels as mutual funds, appeal to the same investor base (including pension and other benefit plans), are subject to regulatory requirements and oversight, and do not trade on a national securities exchange nor through the facilities of a national securities association or an inter-dealer quotation system.[4]

NSCC's Fund/SERV system provides cost-effective and efficient solutions to the marketplace for mutual funds and these other pooled investment funds (i.e., regulated under banks or insurance law), by centralizing and automating the communication of data in the order process, providing standardized formats for transaction data and centralized settlement in same-day funds through NSCC's settlement facilities.

NSCC Insurance Services

NSCC offers similar services for fixed and variable annuities and other insurance products through its Insurance Services platform, also referred to as "Insurance Processing Services" or "IPS". NSCC is similarly the only registered clearing agency that processes annuities and other insurance products. As with Mutual Fund Services, both the insurance company and the distributor must be members of NSCC. The types of distributors that currently use NSCC's Insurance Services are brokers-dealers, insurance agencies, banks and trust companies. There is considerable overlap of membership between Insurance Services and Mutual Fund Services.

The standards for NSCC membership for the use of Mutual Fund Services and Insurance Services are identical, as are the membership agreements for the distributors of both products. The platforms are operated in the same data center. All of the same safeguards and sound business practices that NSCC has developed for Fund/SERV and its Mutual Fund Services are, to the extent appropriate, applied to Insurance Services.

Through the Applications ("APP") and Subsequent Premiums ("SUB") services, distributors of insurance products (such as banks and broker/dealers) can transmit application and premium information to insurance carriers and settle premium amounts, analogous to the purchase of mutual funds (and bank and insurance investment funds) on

[4] Section 4 of the Investment Company Act of 1940 ('40 Act") provides that investment companies are divided into three principal classes: face amount certificate companies, unit investment trusts and management companies. Section 5 of the '40 Act divides management companies into open-end companies and closed end companies. Open-end companies offer securities that are redeemable by the issuer and are commonly referred to as mutual funds. Unit Investment Trusts invest in one or more specified issues and also offer redeemable securities, each of which represents an individual interest in a unit of specified securites.

Fund/SERV. Like the purchases of fund shares through NSCC's Fund/SERV, premiums are settled in same-day funds through NSCC's settlement facilities.

Other services provide payment of other amounts related to insurance products (such as commissions) and the exchange or reconciliation of other data between the insurance company and the distributor, analogous to NSCC's Mutual Fund Services. Many of the insurance information services also support compliance with regulatory requirements by insurance carriers and distributors, such as general suitability regulations and the anti-money laundering provisions of the USA Patriot Act.

Overview

On December 18, 2006, the Commission and the Board jointly issued, and requested comments on, proposed rules that would implement certain of the exceptions for banks from the definition of the term "broker" under Section 3(a)(4) of the Exchange Act, as amended by Gramm-Leach Bliley Act ("GLB") ("Proposal").[5]

We are limiting our comments to proposed § ___.775, "Exemptions from the definition of 'broker' for the way banks effect excepted or exempted transactions in investment company securities." NSCC respectfully suggests that a modification to proposed § __.775 would be in the best interests of investors as more fully described herein.

The proposed § __.775 provides that a bank that meets the conditions for an exception or exemption from the definition of the term "broker" except for the condition in section 3(a)(4)(C)(i) of the Exchange Act, is exempt from such condition to the extent that the bank, among other conditions, effects transactions in certain securities issued by an open-end company, so long as such transactions are effected through NSCC's Mutual Fund Services or directly with a transfer agent acting for the open-end company.

As explained below, we are respectfully recommending that the Proposal be amended so that the same exception applies to other pooled investment products processed through NSCC's Mutual Fund Services, and to variable insurance contracts (such as variable annuities and variable life insurance contracts) processed through NSCC's Insurance Services .

Discussion

Proposed § __.775 provides for an exception or exemption from the definition of the term "broker" but only with respect to transactions in securities issued by "open-end companies" provided that, among other conditions, such transactions are effected through the NSCC's Mutual Fund Services.

---

[5] Securities and Exchange Commission Release No. 34-54946; File No. 57-22-06 and Federal Reserves System 12 CFR Part 215 (Regulation R; Docket No. R-1274)("the Proposing Release").

Fund/SERV Eligible Funds Processed through NSCC

On November 21, 2000, NSCC amended its rules to permit additional types of investment products regulated under state insurance laws or federal or state banking laws to be eligible for processing through NSCC's Mutual Fund Services (including Fund/SERV). To implement the rule change, NSCC rules were amended to add a new class of securities defined as "Investment Funds" that would be eligible for processing through NSCC's Mutual Fund Services. Investment Funds were defined as "any fund or investment entity that is subject to regulation under applicable federal and state banking and/or insurance laws." The Commission release approving the proposed rule change[6] cited several examples of the types of investments that would be eligible which included stable value funds, separate account group guaranteed investment contracts (which are regulated as group annuities) and bank collective trusts.

In a clarification and technical amendment to its Rules, NSCC has further amended Rules 1 and 3 of NSCC's rules to provide that "Fund/SERV-Eligible Funds" is now the term used to describe all types of investments eligible for processing through NSCC's Mutual Fund Services. The term "Fund/SERV-Eligible Fund" means a fund or other pooled investment entity that is "(i) an investment company regulated under the Investment Company Act of 1940, as amended; (ii) a fund or other pooled investment entity that is subject to regulation under applicable federal or state banking and/or insurance law; or (iii) a fund or other pooled investment entity subject to regulation under other applicable law which meets criteria established by [NSCC] from time to time."[7]

We believe that the same policies that led the Commission to approve NSCC's proposed rule change permitting additional types of investment products to be eligible for processing through NSCC's Mutual Fund Services would apply to expanding the list of investments under proposed §___.775 to include any pooled investment product that is processed through NSCC's Mutual Fund Services (*i.e.*, also termed a "Fund/SERV Eligible Fund" under NSCC Rules).

Insurance Products Processed through NSCC

Insurance companies offer variable annuity and variable life contracts which are considered securities under the federal securities laws. These products are collectively referred to as variable contracts. They are used to meet the needs of a variety of investors in both tax qualified and non-qualified circumstances. It should also be noted that all insurance companies and their variable contracts are subject to regulation by the insurance departments of the states in which such contracts are offered.

---

[6] Exchange Act Release No. 34-43600 (November 21, 2000), 65 FR 71182 (November 29, 2000)[File No. SR-NSCC-00-05].

[7] Rule 1 and Section 7 of Rule 3 of NSCC's Rules. See also Securities Exchange Act Release No. 34-54366 (August 25, 2006), 71 FR 52199 [File no. FR-NSCC-2006-7].

NSCC's Annuity Processing Services was approved by the Commission in 1997 (Exchange Act Release No 34-39096, September 19, 1997). This service was expanded to include life insurance products in 1998 (Exchange Act Release No. 34-40634, November 1998). The name of the service was changed to "Insurance Processing Services" (IPS) in 1999 (Exchange Act Release No. 34-41477, June 4, 1999). We believe that the policies that led the Commission to approve the processing of annuities and life insurance products through NSCC's Insurance Processing Services would apply to the same extent in allowing banks to purchase variable annuities and life insurance products, if processed through NSCC's Insurance Services or directly from the issuing insurance carrier.

All of the Fund/SERV-Eligible Funds and all variable annuities and life insurance contracts are subject to regulation under federal, state or comparable laws, typically federal securities laws, and federal and/or state banking laws or state insurance laws as applicable. Such investment products must meet all of NSCC's criteria to be eligible for processing through either NSCC's Mutual Fund Services or Insurance Services. Any bank wishing to effect a transaction in such product through NSCC will be required to enter into an agreement with NSCC that sets forth the bank's rights and obligations, in accordance with NSCC's Rules and normal business practices.

It is burdensome to require a bank to direct these other investment transactions through a broker-dealer, when open-end mutual fund shares could be acquired directly or through NSCC. We believe that this dichotomy is not in the best interests of investors in that it sets up an artificial barrier that may have a chilling effect or introduce additional cost associated with an investor obtaining a particular product. All of the investment products discussed herein are as appropriate for a bank to acquire for its clients, as it would be for the bank to acquire shares in an open-end company.

Recommendations

Based upon the foregoing we respectfully suggest that § __.775 be amended to cover within the exemption from the registered broker-dealer a bank effecting any transaction through NSCC's Mutual Fund Services or Insurance Services (not just those involving open-end companies), or directly through a transfer agent or with the issuing insurance carrier, as applicable

NSCC appreciates the opportunity to comment on the Proposing Release. We apologize for not meeting the deadline set for receipt of comments and respectfully request that our comments be considered, notwithstanding our letter's arrival after the deadline. Please feel free to contact Carol A. Jameson, Deputy General Counsel and Vice President of NSCC at 212-855-3213 or Judith A. Hasenauer of Blazzard & Hasenauer, PC, NSCC's special insurance counsel at 954-545-9633, with any questions that you may have regarding our comments.

Sincerely yours,

NATIONAL SECURITIES CLEARING CORPORATION

By:

Carol A. Jameson
Vice President and Deputy General Counsel

Cc: Judith A Hasenauer, Blazzard & Hasenauer, P.C.